HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 1606 (S/S) 2007

(Alongwith Connected writ petitions)

Shyam Singh ...Petitioner

Vs.

Managing Director
And 2 others. .....Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 10th December, 2007.

Initial of Judge.

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HIGH COURT OF UTTARAKHAND AT NAINITAL

(1) Writ Petition No. 1606 (S/S) of 2007

Shyam Singh S/o Late Sri Lekhraj Singh,
Resident of Mohalla Bukhara,
Post Office Bijnor, District Bijnor. -----Petitioner

Versus

1. Managing Director of Uttarakhand Transport Corporation, 117 Indra Nagar, Dehradun,
2. Deputy Chief Manager/D.G.M. traffic, Uttarakhand State Road Transport Corporation, Haridwar,
3. Regional Manager, Uttarakhand Transport Corporation, Dehradun. -----Respondents

With

(2) Writ Petition No. 1621 (S/S) of 2007

Chandra Sekher Uniyal
S/o late Dharmanand Uniyal.
Resident of Himalayan Avas Vikas Colony,
Haripur Kalan, Motichur, Dehradun. ----Petitioner

Versus

1. State of Uttarakhand through its Secretary, Department of Transport, Govt. of Uttarakhand, Dehradun,
2. Managing Director Uttarakhand Roadways Transport Corporation, 117 Indira Nagar, Dehradun.
3. Regional Manager, Uttarakhand Roadways Transport Corporation, Dehradun. --------Respondents

With

(3) Writ Petition No. 1624 (S/S) of 2007

Brij Pal Singh S/o Sri Tara Chand,
R/o village Tugana, Tehsil Bhagpat,
District Bagpat,
At present posted at the office of
Regional Manager, Uttarakhand Transport
Corporation, Delhi. ------Petitioner

Versus

1. Uttarakhand Transport Corporation,
   through its Managing Director, 117 Indira Nagar
   Dehradun.
2. Managing Director Uttarakhand Transport
   Corporation, 117 Indira Nagar, Dehradun.
3. Regional Manager, Kumaon Region,
   Uttarakhand Transport Corporation,
   Nainital. --------Respondents

With

(4) Writ Petition No. 1640 (S/S) of 2007

Ram Chandra Singh S/o late Sri Ram Dayal Singh,
R/o Subhash Nagar, Kashipur,
Udham Singh Nagar. -----Petitioner

Versus

1. State of Uttarakhand through Secretary Transport,
   Govt. of Uttarakhand, Secretariat, Dehradun,
2. Managing Director Uttarakhand Transport
   Corporation, 117 Indira Nagar, Dehradun.
3. State of U.P. through Secretary Transport,
   Govt. of U.P.
   Civil Secretariat, Lucknow, U.P.,
4. Chairman, Uttarakhand Transport
   Corporation, Kumaon Region, Nainital,
5. Divisional Chief Manager,
   U.P. Transport Corporation, Haridwar,
   Uttarakhand. --------Respondents

With

(5) Writ Petition No. 1657 (S/S) of 2007

Satya Pal Singh S/o Sri Sukchat Singh,
R/o Verma Niwas, Mazra, Dehradun. -----Petitioner

Versus

1. Uttarakhand Transport Corporation,
   through its Managing Director, 117,
   Indira Nagar, Dehradun.
2. Managing Director Uttarakhand Transport
   Corporation, 117 Indira Nagar, Dehradun.
3. Regional Manager, Sanchalan,
   Uttarakhand Transport Corporation,
   Dehradun. -----Respondents

Sri T.S. Rautela Adv., Sri B.M. Pingal Adv., Sri Anil K. Joshi Adv., Sri Vipul Sharma Adv. holding brief of Ms. Pooja Banga, Adv. & Sri B.P. S. Mer, Adv. learned counsel for the petitioners,

Sri V.B.S. Negi Adv., Sri V.K. Bisht, Sr. Adv., Sri D.C.S. Rawat, Adv. and Sri Rajeev S. Bisht, Adv. learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri T.S. Rautela, Adv. Sri B.M. Pingal, Adv., Sri Anil K. Joshi, Adv., Sri Vipul Sharma Adv. holding brief of Ms. Pooja Banga Adv. Sri B.P.S. Mer, Adv. for the petitioners and Sri V.B.S. Negi, Adv. Sri V.K. Bisht, Senior Advocate assisted by Sri Virendra Kaparwan Adv., Sri D.C.S. Rawat Adv., Sri Rajeev Singh Bisht Adv. and learned Standing Counsel for the respondents.

Since common question of law is involved in all these writ petition therefore, all these writ petitions have been consolidated and are being disposed of by a common judgment. Writ petition no. 1606)ss)2007 shall be the leading case.

So far the facts of the petitions are concerned, I am confining to state the facts of the writ petition no. 1606(ss)2007 Shyam Singh vs. Managing Director of Uttarakhand Transport Corporation and two others. The petitioner in this writ petition was appointed as Conductor in the U.P. State Road Transport Corporation and while the petitioner was on duty on 28th December 2000 in bus No. U.P.-06-5341 playing from Delhi to Kotdwar the incident took place, on the basis of which whole proceeding was started. At Mawana, the Inspecting Staff checked the bus and found some of the passengers sitting in the bus were not having tickets, though the Conductor collected money from the passengers. This was

the allegation against the petitioner, though he has declined the allegations and has submitted that Police personnel were sitting on the bus from 1 or 2 Kms. before from the place of occurrence, therefore, tickets could not be issued to them.

Since the Court is not entering into the facts of the case and is deciding the writ petitions on the question of law involved in the writ petitions, therefore the facts are immaterial as the facts of the petitions varies from one another but the question of law in all the writ petitions is identical.

Counsel for the petitioners have raised following grounds to assail the impugned orders:-

That the impugned orders are passed by the Managing Director in the appeals of petitioners enhancing the punishment. The preliminary inquiries were conducted against the petitioners by the Regional Manager, Dehradun prior to placing them under suspension.

In the present case, the petitioner was suspended after holding preliminary inquiry vide order dated 20th February 2001 passed by Regional Manager, U.P.S.R.T.C., Dehradun. On 14th March 2001 a charge sheet was served upon the petitioner levelling charges against him and the Assistant Regional Manager was appointed as Inquiry Officer. The Inquiry Officer, after holding inquiry found that the charges levelled against the petitioner have not been proved and has submitted his report to the Regional

Manager, Dehradun. The Regional Manager is the Appointing Authority of the petitioner. Since the Regional Manager was not agreed with the findings recorded by the Inquiry Officer, he issued show cause notice to the delinquent as to why he should not be dismissed from service. This notice was received by the delinquent on 06.08.2001 and he replied the notice on 15.08.2001. After going through the record as also to the reply submitted by the petitioner, the Regional Manager passed order on 3rd January 2002 thereby reduced the punishment Proposed in show cause notice and awarded punishment reverting the petitioner at his initial pay-scale of the post for three years and also passed order not to make payment of salary to the petitioner for the period for which he remained under suspension.

Against the order dated 3rd January 2002 passed by the Regional Manager, the petitioner preferred appeal before the Deputy Chief Manager/Zonal General Manager, U.P.S.R.T.C., Haridwar.

Regulation-69 of the Uttar Pradesh Road Transport Corporation Employees (other than officers) Service Regulations 1981 provides for appeal. Regulation 69 (1) of the Regulations provides that the employee shall be entitled to appeal to the next higher authority from an order passed by the Appointing Authority or by any other Authority. Thereafter Regulation 69(A) provides for revision for the purposes of deciding the appeal. Regulation 69 and 69-A are reproduced as under:-

"69. Appeal *–(1) An employee shall be entitled to appeal to the next higher authority from an order passed by the appointing or any other authority.*

(2). An employee preferring an appeal shall do so in his name. The memorandum of appeal shall contain all material statements and arguments relied upon by the appellant.

(3). The appeal shall not contain any intemperate language. Any appeal, which contains such language, may be liable to be summarily dismissed.

(4). The appeal shall be addressed to the appellate authority and submitted to the authority, against whose order it is preferred through the moral proper channel.

(5). The appeal shall be preferred within three months of the date of the order. An appeal preferred beyond three months but not beyond six months of the date of the order, may be accepted by the appellate authority if sufficient cause is shown for the delay. An appeal preferred beyond time shall be dismissed summarily.

69. A:- *Notwithstanding anything contained in these Regulations the Chairman or in his absence the Managing Director of Uttar Pradesh State Road Transport Corporation may, on its own motion, or otherwise, call for the record of any case relating to dismissal, removal and reduction in rank decided by any of the authorities subordinate to him in exercise of powers conferred by these Regulations and-*

(a) confirm, modify or reverse the order passed by such authority or

(b) direct that a further enquiry be held in the case; or

(c) reduce or enhance the penalty imposed by such order; or

(d) made such other order in the case as it may deem fit.

Provided that if enhancement in the penalty imposed where by any such order, the employee concerned, shall be given opportunity of showing cause against the proposed enhancement;

Provided that if enhancement in the penalty imposed whereby any power on its own motion, or otherwise, shall not call for the record beyond the period of three months from the date of order in appeal."

Learned counsel for the petitioners have submitted that the Regulation-69 provides provision for appeal to an employee from an order passed by the Appointing Authority or by any other Authority. Power of revision has been conferred to the Chairman or in his absence, to the Managing Director against the order of Appellate Authority. The revisional power can be exercised by the Revisional Authority on its own motion or otherwise. It is further submitted that Regulation-69 (A) provides for enhancement of any penalty in the revision, however before enhancement of the punishment, the employee concerned shall be given opportunity of showing cause against the proposed enhancement of punishment. Submission of the learned counsel for the petitioner is that the Appellate Authority has not been conferred power

to enhance the punishment and this power is conferred only to the Revisional Authority. Had the power of enhancement of punishment would have been with the Appellate Authority, the Legislature would certainly have made a mention in regulation- 69, as has been made under Regulation-69 (A). It is further submitted that it is the basic principle of natural justice that while passing order against any incumbent, he should be provided opportunity of hearing. In the present case no opportunity of hearing was provided by the Authority to the incumbent while enhancing the punishment.

On the other hand, learned Standing Counsel for the respondents have submitted that since notice of dismissal was already served upon the petitioner by the Appointing Authority, though lateron he has reduced the punishment from dismissal to placing the petitioner at the lowest pay-scale of the post and also forfeiting the salary of the period while he remained under suspension and thus there was no need to send again show cause notice for dismissal of service.

The second ground on which the petitioners have attacked the impugned order is that there is no provision of enhancing the punishment by the Appellate Authority. On the contrary learned Standing Counsel for the respondents have submitted that there is no provision under the Regulation prohibiting the Appellate Authority to enhance the punishment. Had it been the position, the Legislature could have make specific provision under the Regulation providing powers of enhancement of the punishment but such power is not stipulated in the

Regulation and it stipulates under the revision only. Thus, it cannot be said that under the appeal, enhancement of punishment can be made by the Appellate Authority.

The third ground, on which the petitioners have assailed the impugned order and which is most salient at this juncture, is that the Managing Director has no jurisdiction, at all, to decide the appeal on the contrary in absence of Chairman, the Managing Director can exercise the power of revision and if the power of Appellate Authority is exercised by the Managing Director, the petitioners will be deprived of to avail opportunity of revision in absence of Chairman.

Learned counsel for the petitioners have submitted that as per the Regulation-69 of U.P. Road Transport Corporation Employees Service Regulation 1981, being aggrieved with the orders passed by the Appointing Authority or any other Authority, the power to decide the appeal is to the next higher authority. Since the order awarding punishment to the petitioner was passed by the Appointing Authority i.e. the Regional Manager the Appellate Authority, who is the next higher authority in hierarchy, is the Deputy General Manager.

Learned Standing Counsel for the respondents have submitted that the Board has passed resolution on 31.12.2003 and under agenda no. 21 the power can be exercised by the Managing Director. The Agenda No. 21, which provides for delegating power in personal matters to officials of Corporation is as under:-

"Agenda no. 21:-

The proposal placed before the Board was examined and it was resolved that:-

1. *The delegation of powers shall be continued as per UPSRTC administrative arrangement till such time the Corporation frames its own service rules.*
2. *in case where the post is not available in UTC, the powers delegated to such post shall not be further delegated, but will be vested in MD."*

Under this Resolution, in case, where the post in not available in Uttarakhand Transport Corporation, the power delegated to such post shall not be further delegated, but will be vested in Managing Director. Learned Standing Counsel for the respondents have submitted that since the appeal against the order passed by the Regional Manager was filed before the Zonal General Manager and the post of Zonal General Manager is not available in Uttarakhand Transport Corporation, therefore the power of appeal will be vested in Managing Director, according to aforesaid resolution of the Board. The hierarchy in the Uttarakhand Transport Corporation is as under:-

Assistant Divisional Manager, next higher authority is Divisional Manager and then the Deputy General Manger, thereafter the General Manager, Managing Director and then the Chairman.

Since petitioners' appointing authority was Regional Manager. The Divisional Manager and the Deputy General

Manager in Uttarakhand Transport Corporation are having the same rank and rights, which were vested upon the Regional Manager in the U.P.S.R.T.C. The next Authority, before whom the appeal can be preferred, under the Regulation, is the General Manager.

Learned counsel for the parties have admitted that the post of General Manager is available in the Uttarakhand Transport Corporation. In these circumstances, in my opinion, the appeal should have been decided by the General Manager and not by the Managing Director.

Since the Managing Director has usurp the power, which was to be exercised by the General Manager and he was not having the Appellate power, the impugned order is not sustainable on this ground alone. Thus, the Managing Director was not having jurisdiction to decide the appeal and the writ petition deserves to be allowed on this ground alone. I do not think to enter into the merits of other grounds raised in the writ petitions.

Accordingly the writ petition is partly allowed. The impugned order dated 8.10.2007 passed by Managing Director, Uttarakhand Transport Corporation, Dehradun is hereby quashed. No order as to costs.

Learned counsel for the respondents have submitted that the respondents may be directed to decided the appeal afresh, but this option is always open to the respondents to decide the appeal in accordance with law.

Since in all the above writ petitions, the question of jurisdiction is involved, therefore all the aforesaid writ petitions are disposed of on the same terms and conditions of the writ petition no. 1606(ss)2007. Let certified copies of this judgment be placed in the above connected writ petitions.

(M.M. Ghildiyal, J.)

December 10, 2007:
NCM: